

1 Robert A. Bailey (#214688)  
2 rbailey@afrct.com  
3 Michael Rapkine (#222811)  
4 mrapkine@afrct.com  
5 ANGLIN, FLEWELLING, RASMUSSEN,  
6 CAMPBELL & TRYTTEN LLP  
7 199 South Los Robles Avenue, Suite 600  
8 Pasadena, California 91101-2459  
9 Tel: (626) 535-1900 | Fax: (626) 577-7764

10  
11 Attorneys for Defendant  
12 WELLS FARGO BANK, N.A.  
13 ("Wells Fargo")

14  
15 UNITED STATES BANKRUPTCY COURT  
16 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

17 In re  
18 JAMES AMAR SINGH,  
19 Debtor.

20 Case No.: 15-40917-WJL  
21 Adv. Case No.: 16-04026-WJL  
22 Chapter 13

23  
24 JAMES AMAR SINGH,  
25 Plaintiff,  
26 v.  
27 WELLS FARGO BANK, N.A.,  
28 Defendant.

29  
30 **DEFENDANT WELLS FARGO'S  
31 MOTION TO DISMISS THE FIRST  
32 AMENDED COMPLAINT**

33  
34 Date: July 20, 2016  
35 Judge: William J. Lafferty III  
36 Time: 10:30 a.m.  
37 Place: U.S. Bankruptcy Court  
38 Courtroom 220  
39 1300 Clay Street  
40 Oakland, CA

41  
42 **TO DEBTOR, HIS COUNSEL OF RECORD, ALL OTHER INTERESTED PARTIES,**  
43 **THE CLERK OF THE COURT, AND THE HONORABLE WILLIAM J. LAFFERTY III:**  
44  
45 **PLEASE TAKE NOTICE** that on July 20, 2016 at 10:30 a.m. in courtroom 220 of the  
46 above-entitled Court, located at 1300 Clay Street, Oakland, California, the Honorable William J.  
47 Lafferty presiding, defendant Wells Fargo Bank, N.A. ("Wells Fargo") will move to dismiss

1 each claim in the first amended adversary complaint pursuant to Rules 7009(b) and 7012(b)(6).

2 Grounds for Wells Fargo's motion to dismiss are as follows:

3 **1. First Claim: Injunctive Relief**

4 Plaintiff fails to state a claim for injunctive relief because: (i) injunctive relief is a  
5 remedy rather than an independent cause of action; (ii) even if injunctive relief was a standalone  
6 claim, plaintiff's entire adversary action is barred by res judicata under the two-dismissal rule;  
7 (iii) plaintiff's inability to tender even a portion of his considerable debt vitiates this equitable  
8 claim; and (iv) this claim is predicated on the faulty theory that Wells Fargo does not have a right  
9 to enforce its security interest and conduct a non-judicial foreclosure.

10 **2. Second Claim: Declaratory Relief**

11 Plaintiff fails to state a claim for declaratory relief because: (i) this claim is barred by res  
12 judicata under the two-dismissal rule; (ii) plaintiff's request for declaratory relief is premised on  
13 a misunderstanding of the automatic stay provision; and (iii) plaintiff's lack of tender vitiates this  
14 equitable claim.

15 **3. Third Claim: "Turnover of Unlawfully Conveyed Real Property"**

16 Plaintiff fails to state a claim for "turnover of unlawfully conveyed real property"  
17 because: (i) this claim is barred by res judicata under the two-dismissal rule; (ii) "hyper-  
18 technical" irregularities with regard to recorded foreclosure notices are not a legitimate basis to  
19 challenge the non-judicial foreclosure process; and (iii) plaintiff's lack of tender vitiates this  
20 claim.

21 **4. Fourth Claim: Slander of Title**

22 Plaintiff fails to state a claim for slander of title because: (i) this claim is barred by res  
23 judicata under the two-dismissal rule; (ii) this claim is predicated on the legally defective theory  
24 that Wells Fargo does not have a right to enforce its security interest and conduct a non-judicial  
25 foreclosure; (iii) none of the foreclosure notices recorded with respect to the subject property  
26 were false; (iv) plaintiff fails to allege sufficient facts to pierce California's qualified common-  
27 interest privilege, codified at Civil Code § 47(c)(1); (v) the pleadings do not adequately allege  
28 damages; (vi) plaintiff's lack of tender vitiates this claim; and (vii) plaintiff does not otherwise

1 allege the elements of this tort.

2       **5. Fifth Claim: Financial Elder Abuse**

3       Plaintiff fails to state a claim for financial elder abuse because: (i) this claim is barred by  
4 res judicata under the two-dismissal rule; (ii) this claim is predicated on the legally defective  
5 theory that Wells Fargo does not have a right to enforce its security interest and conduct a non-  
6 judicial foreclosure; (iii) none of the foreclosure notices recorded with respect to the subject  
7 property were false or improper; (iv) plaintiff fails to allege sufficient facts to pierce California's  
8 qualified common-interest privilege; (v) the pleadings do not adequately allege damages;  
9 (vi) plaintiff's lack of tender vitiates this claim; and (vii) plaintiff does not plead corporate  
10 ratification or authorization by a managing agent of Wells Fargo.

11       **6. Sixth Claim: Quiet Title**

12       Plaintiff fails to state a quiet title claim because: (i) this claim is barred under the two-  
13 dismissal rule; (ii) as with the rest of the complaint, this cause of action is premised on the faulty  
14 theory that Wells Fargo does not have a legitimate interest in the property; and (iii) plaintiff's  
15 lack of tender is a death knell to this equitable claim.

16       **7. Seventh Claim: "Fraud, Malice & Oppression"**

17       Plaintiff fails to state a claim for fraud because: (i) this claim is barred under the two-  
18 dismissal rule; (ii) this claim is predicated on the legally defective theory that Wells Fargo does  
19 not have a right to enforce its security interest and conduct a foreclosure; (iii) Wells Fargo has  
20 not made any misrepresentation in connection with the foreclosure proceedings; (iv) plaintiff  
21 does not allege the element of scienter; (v) this claim is not pled with adequate specificity; and  
22 (vi) the pleadings do not sufficiently allege causation or resulting damages.

23       **8. Eighth Claim: Violation of Business & Professions Code § 17200, *et seq.***

24       Plaintiff fails to state a claim for unfair business practices because: (i) this claim is  
25 barred under the two-dismissal rule; (ii) this claim is entirely derivative in nature, predicated on  
26 legally defective theories; (iii) plaintiff does not have standing to assert this UCL claim;  
27 (iv) plaintiff's lack of tender vitiates this claim; and (v) plaintiff has not provided a plausible  
28 explanation regarding why he is entitled to injunctive relief or restitution.

## 9. Ninth Claim: Accounting

Plaintiff fails to state an accounting claim because: (i) this claim is barred under the two-dismissal rule; (ii) plaintiff cannot establish the required fiduciary duty or special relationship that is necessary to maintain such a claim; (iii) plaintiff cannot allege that Wells Fargo owes him any money; (iv) the claim is not pled with sufficient particularity; and (v) plaintiff otherwise fails to plead facts sufficient to constitute a claim upon which relief can be granted.

7 The motion to dismiss is based upon this motion, the notice of hearing being filed  
8 concurrently herewith, the accompanying memorandum of points and authorities, the first  
9 amended adversary complaint (the “complaint” or “FAC”), the accompanying request for  
10 judicial notice, and on Wells Fargo’s argument at the hearing.

**WHEREFORE**, Wells Fargo prays as follows:

12       a.     The Court enter an order granting Wells Fargo’s motion to dismiss each claim  
13 without leave to amend, dismissing the adversary proceeding with prejudice;  
14       b.     The Court enter a judgment of dismissal in Wells Fargo’s favor; and  
15       c.     The Court enter such other relief as the Court deems appropriate.

Respectfully submitted,

Dated: May 31, 2016

ANGLIN, FLEWELLING, RASMUSSEN,  
CAMPBELL & TRYTTEN LLP

By: /s/ Robert A. Bailey

Robert A. Bailey  
Attorneys for Defendant  
WELLS FARGO BANK, N.A.